IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 614/2001
(Old No.1717 of 1989)

Harakh Singh S/o Pratap Singh,
R/o Village Jamira P.S. Tallital,
District Nainital …Appellant.

Versus

State of U.P. … Respondent.

Smt. Geeta Parhar, learned Amicus Curiae for the appellant.
Learned A.G.A. for the State.

Dated: November 06,2007

Hon'ble B.C. Kandpal, J.

This Criminal Appeal, under Section 374 of the Code of Criminal Procedure has been preferred by the appellant, against the judgment and order dated 3-8-1989, passed by the Special Judge/Additional Sessions Judge, Nainital, in S.T. No. 174 of 1988, convicting the appellant U/S 324 I.P.C. and sentencing him to udergo R.I. for two years.

2- Brief facts of the case are that on 28-3-1987 at about 8.45 A.M. Keshar Sing (complainant) was going to his office situated at Observatory, Nainital and when he reached near Basani the accused/appellant Harak Singh fired from a gun with intention to kill him. The pellets of the gun fire hit the complainant on his back and both the legs and in the hands. The occurrence was witnessed by Narendra Singh, Rajendra Singh and other residents and passerby of that place. The accused/appellant ran away in forest. Three days prior to this incident, another quarrel had also taken place in village Baldiyakhan. That time the

accused was in the influence of intoxication and he abused the complainant and threatened him with life.

3- After the occurrence, the witnesses brought the complainant from the place of occurrence to Baldiyakhan and thereafter he was taken to B.D. Pandey Hospital in a motorcycle. There he was medically examined. Then the complainant went to police station Tallital and lodged the F.I.R., Ext. Ka.2. On the basis of written report, chick F.I.R. Ext. Ka.4 was prepared by Head Moharrir at the Police Station and made an entry in the G.D. about the registration of the case, which is marked as Ext. Ka.5. Soon after registration of the case, S.I. Girish Chandra started investigation in the case. He gook in to possession an empty cartridge from the place of occurrence and prepared its Memo, Ext. Ka.6 and site plan of the place of occurrence, Ext. Ka.7. The accused/appellant was absconding hence proceedings U/S 82 and 83 Cr. P.C. were initiated. After completing the investigation the Investigating Officer submitted charge sheet, Ext. Ka.14 declaring the accused as an absconder.

4- The chief Judicial Magistrate, Nainital vide his order dated 16.5.1988 committed the case to the Court of Sessions for trial.

5- The learned Sessions Judge, framed charge U/S 307 I.P.C. against the accused/appellant, to which he pleaded not guilty and claimed to be tried.

6- The prosecution in order to establish its case examined Dr. M.N. Dhondiyal, P.W.1, Keshar Singh, P.W.2, Narendra Singh, P.W.3, Rajendra Singh, P.W.4, S.I. Girish Chandra, P.W.5, Dr. J.P. Bhatt, P.W.6,

Constable Dafedar Singh, P.W.7 and Ramesh Bhatt, P.W.8.

7. P.W.1, Dr. M.N. Dhondiyal, has medically examined the complainant on 28.3.1987 at about 10 A.M. in the B.D. Pandey, Hospital Nainital and found the following injuries on his person:-

1. Punctured (gunshot) wound 0.5 cm x 0.5 cm each on the back of trunk, four in number, in an area of 20.5 cm x 15cm. The margins of the wounds were inverted and ecchymosed, with an area of inflammatory ring around the wound. The area of the inflammation measures 0.5 cm in diameter. The wounds were wounds of entry. The pellets were not detectable. Advised x-ray.
2. Gunshot wounds, two in number, in an area of 10cm x 4cm on the posterior aspect of right upper arm. The margins were inverted and ecchymosed, with an inflammatory ring around the wound as in no.1. The wounds were wounds of entry. No pellet could be found. Advised x-ray.
3. Gunshot wound 0.5cmm x 0.5cm oval in shape, on the posterior aspect of right hand, margins were inverted and ecchymosed with an area of inflammatory surrounding the wound as in no.1. The wound was the wound of entry. No pellet could be found. Advised x-ray.
4. Gunshot wound 0.5cm x 0.5cm oval in shape, on the posterior aspect of left leg, 7cm below left knee, margins inverted and ecchymosed. The wound was wound of entry. No pellet was detectable. Advised x-ray.

5. Gunshot wounds two in numbers, 0.5cm x 0.5cm carb in shape, in an area of 11cm x 3cm, on the posterior aspect of left leg, the lower one is at the lerlog of the medical malleous. The margins were inverted and ecchymosed, with a ring of inflammation around the wound. These wounds were of entry. Pellets not detectable. Advised x-ray.
6. Gunshot wounds two in number, 0.5cm x 0.5cm each, oval in shape, in an area of 11cm x 3cm on the posterior aspect of left thigh, 12cm above left knee. The margins were inverted and ecchymosed with a ring of inflammation surrounding the wounds. There wee sounds of entry. No pellet was detectable. Advised x-ray.
7. Gunshot wounds, three in number in an area of 15cm x 4cm on the right leg, oval in shape, margins were inverted with an area of inflammation surrounding the wounds. Margins were ecchymosed. These were wounds of entry. Pellets not detectable. Advised x-ray.
8. Gunshot wound, two in number, in an area of 11.5cm x5cm on the posterior aspect or right thigh, 4.5cm above right knee, margins inverted and ecchymosed. Wounds were of entry, oval in shape. Pellets not detectable. Advised x-ray.
9. Gunshot wound 0.5cm x 0.5cm, oval in shape on the right lateral aspect of trunk, 6cm below the lower end of right shoulder back, margins inverted ecchymosed, with an inflammatory ring surrounding it. This was wound of entry. No pellet was detectable. Advised x-ray.

8- This witness has deposed that the injuries were caused by some fire arm and were fresh at the

time of examination. He has proved the injury report, Ext. Ka.1. In the opinion of the witness the injuries could have been caused on 28.3.87 at about 8.45 A.M.

9- P.W.2, is the injured eye witness and complainant of the case. He ahs narrated about the incident. P.W.3 Narendra Singh and P.W.4, Rajendra Singh are also the eye witnesses of the occurrence. Both these witnesses have supported the prosecution case.

10- P.W.5 Girish Chandra is the Investigating Officer of the case. He has narrated about the steps taken by him during the investigation and proved various documents prepared by him.

11- P.W.6, Dr. J.P. Bhatt, ahs taken x-ray of the injured on 28.3.87 at about 6.30 P.M. He ahs proved the x-ray plates Ext. 6 to Ex.12 and also proved the x-ray report, Ext. Ka.19 prepared by him. According to this witness he did not find any fracture on the person of the injured.

12- P.W.7, Constable Dafedar is a formal witness. He had taken the case property in a sealed condition to Scientific Laboratory Agra and deposited there on 24.11.1987.

13- P.W.8, R.C. Bhatt is also a formal witness. This witness has made G.D. entry at the Police Station about the submission of gun by Bishan Singh.

14- The accused in his statement U/S 313 Cr. P.C. has denied the prosecution case. He alleged that he has been falsely implicated in the case due to old enmity

of the parties. He did not adduce any evidence in his defence.

15- The learned Sessions Judge after hearing learned counsel for the parties and perusing the evidence on record, held the accused/appellant guilty for an offence U/S 324 I.P.C. and accordingly convicted and sentenced him to undergo R.I. for two years.

16- Feeling aggrieved the accused/appellant has preferred this appeal before the Allahabad High Court, which has been transferred to this Court after creation of new State.

17- I have heard Smt. Geeta Parihar, learned Amicus Curiae on behalf of the accused/appellant and learned A.G.A. and have gone through the record.

18- Learned Amicus Curiae has submitted that the accused/appellant has falsely been implicated in the case due to previous enmity and the learned Sessions Judge has committed manifest error by relying on the evidence of the witnesses. She has also argued that the prosecution has not been able to bring on record strong motive against the accused/appellant to commit the crime.

19- The learned A.G.A. has opposed the submission of the learned Amicus Curiae and submitted that as many as nine gun-shot wounds were detected from the person of the complainant and the occurrence was seen by public eye witnesses Narendra Singh (P.W.3) and Rajendar Singh (P.W.4) and the learned Sessions Judge has rightly convicted the accused/appellant by the impugned judgment and

order. The motive has been established by the prosecution against the accused/appellant.

20- After having gone through the evidence on record, I do not find any force in the argument advanced by the learned Amicus Curiae. It is the specific case of the prosecution that the accused/appellant ahs fired gun shot upon the complainant Keshar Singh at the time and date of the incident. P.W.2, Keshar Singh is the injured eye witness and complainant of the case. According to this witness, at the time of incident he was employed in Government Observatory, at Nainital. He used to go to his place of posting on foot from his house. On 28.3.87 he started from his house to his office and when he reached near the forest of village Basani then a fire was hurled at him at about 8.45 A.M. He immediately turned his back and saw that accused has fired upon him. The fire was hurled at him by a single barrel gun. According to this witness the occurrence was witnessed by Rajendra Singh, Chandan Singh and Narendra Singh. After firing at him the accused ran away towards the forest of village Jamira. Thereafter Rajendra Singh brought him to Baldiyakhan on his back. He was brought to B.D. Pandey Hospital on a motorcycle where he was medically examined. This witness has denied the suggestion that the accused had been implicated due to party-bandi.

21- The deposition of the complainant P.W.1, Keshar Singh has been fully supported by eye witnesses P.W.3, Narendra Singh and P.W.4 Rajendra Singh. Both these witnesses have stated that they have seen the accused firing gun shot on the injured Keshar Singh and after firing shot the accused had run away from the place of the occurrence. Both these witnesses were

cross-examined at length but nothing could be brought out in their cross-examination which may turn their on oath statement untrustworthy. The testimony of the eye witnesses seem to be plausible and reliable. No reason has been assigned to these witness from the side of the accused/appellant as to why they will depose against the accused/appellant falsely.

22- On the point of motive, P.W.2, Keshar Singh has stated in his statement on oath that his father was a witness in a case against the father of accused Harak Singh in a case of some dealings and for this reason the accused was inimical to him. He has further stated that three days prior to the instant incident the accused/appellant abused and threatened him in a drunken state. Here it may be mentioned that the accused/appellant has admitted old enmity with the complainant and it the existing circumstances of the case it has amply been proved that the accused/appellant had motive to commit the incident of causing injuries to the complainant by firing gunshot.

23- So far as the medical evidence in the case is concerned, Dr. M.N. Dhondiyal, P.W.1 has specifically deposed that the fire arm wounds were caused by a single fire. This witness, however, has not noted that the injuries caused to the complainant were sufficient to cause the death. X-rays of the injured were taken by Dr. J.P. Bhatt, P.W.6 and according to this witness no fracture was found from the body of the injured eye witness. The leaned Sessions Judge has held that although the wounds have been caused by a fire arm but perusal of injury report, Ext.Ka. 1 revealed that the wounds were simple in nature. The depth of gunshot wounds was nominal and no pellet was detected from

these wounds. Injury report further that the wounds were not caused on vital part of the injured Keshar Singh but were caused to his leg, hand, thigh and back. The accused caused one fire shot. Looking to nature of injuries, the seat of gunshot fired at the injured etc. the learned Sessions Judge has rightly held the accused/appellant guilty for an offence U/S 324 I.P.C. instead of Section 307 I.P.C. charged against him.

24- It is also pertinent to mention here that in the present case prompt F.I.R. has been lodged which turndown the possibility of embellishment and false implication of the accused/appellant. According to prosecution version the complainant reached to the Hospital at 10.A.M. and he was medically examined and thereafter he dictated the F.I.R. and then lodged it at Police Station at 12.00 P.M.

25- After having gone through the finding recorded by the learned Sessions Judge and having perused the evidence on record, I find no infirmity in the impugned judgment and the same is liable to be affirmed.

26- The learned Amicus Curiae also submitted that the accused/appellant has remained in jail for about one year and three months and he is an old man, therefore, he be sentenced to pay a reasonable amount of fine instead of sending him to prison.

27- I find force in the submission raised by learned Amicus Curiae. The record reveals that the accused/appellant was arrested on 3-5-88 and his bail bonds were accepted on 21-8-1989. Therefore, he remained in prison for abut one year and three

months. The accused/appellant is more than 73 years of age; the incident is of the year 1987, and looking to the fact that he has remained in jail for a period of about one year and three months, it will be in the interest of justice to impose reasonable fine against the accused/appellant, instead of sending him to jail to serve out the sentence of imprisonment awarded against him.

28- In view of above discussion, I am of the considered view that so far as the merits of the case are concerned, the appeal lacks merit and is liable to be dismissed. Accordingly the appeal is dismissed.

29- However, so far as the sentence awarded to the accused/appellant is concerned, the impugned judgment and order passed by the trial Court is modified up-to the extent that the accused/appellant is convicted U/S 324 I.P.C. and is sentenced to the period of imprisonment already undergone by him and to pay a fine of Rs. 5000/- The appellant is given two months time to deposit the amount of fine and in default of payment of fine he shall undergo one year's R.I.

30- Let the record be transmitted to the Court concerned for compliance.

(B.C.Kandpal, J.)

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